

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 January 8, 2019

17 1:04 PM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI

1 HEARING re Notice of Hearing / Notice of Status Conference

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3 HEARING re Notice of Agenda for Hearing on January 8, 2019

4 at 10:00 a.m.

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25 Transcribed by: Sonya Ledanski Hyde

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18 ROBERT WEISBERG
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20 EVAN J. ZUCKER
21 LAUREN E. ZUMBACH
22 DAVID R. ZYBERBERG
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P R O C E E D I N G S

THE COURT: Please be seated. Okay, good afternoon in re: Sears Holding Corporation for those of you who've been waiting since 11 and that includes people on the phone, I apologize, but as often happens in large chapter 11 cases a number of very capable and talented people have been working very hard to see if important agreements can be reached or at least agreements as to the process can be reached, and I think the time while you were waiting was spent productively by those people.

MR. SCHROCK: Thank you very much, Your Honor. Ray Schrock, Weil, Gotshal, Manges here for the debtors along with my partner, Sunny Singh. Your Honor, first of all, thank you very much for your time this morning, and for the patience of frankly all the parties involved. We have what we believe is some very good news for Sears and its stakeholders. After you know, several days of virtually around the clock negotiations and you know, some conversations with the court and our consultation parties the debtors have determined that they will not be adjourning the auction on January 14th, and that subject to ESL putting in a revised form of bid letter, APA as well as a deposit for 120 million dollars by 4:00PM tomorrow, that the debtors will be reviewing that bid and comparing it against the company's other alternatives at an auction on January 14th.

1 THE COURT: And this is assuming that that bid is
2 consistent with what the parties have been discussing over
3 the weekend and today?

4 MR. SCHROCK: That is correct, Your Honor.
5 They've been round the clock, so we haven't had time for the
6 documentation to catch up.

7 THE COURT: Okay.

8 MR. SCHROCK: With everyone, or with all of the
9 changes. A couple of important points. As part of this
10 deposit there will be a -- as part of the 120 million dollar
11 deposit the -- they -- we have agreed that a portion of that
12 will be effectively non-refundable and paid to the -- to the
13 estate in the event -- will be paid to the estate in the
14 event that ESL does not win the auction, and so that will
15 cover that, and this is intended to cover the actual costs
16 of comparing what the company's expenses would be if they
17 were to commence GOB sales now versus, you know, moving it
18 out to a week from now.

19 THE COURT: To get the results of the auction?

20 MR. SCHROCK: To get the results of the auction,
21 exactly Judge. So, you know, that number is I believe 17.9
22 million dollars. There's also an agreement to subject to
23 approval by Your Honor, to enter, or to shorten the time
24 required in this one occasion for going out of business --
25 GOB notices, which is 10 calendar days under the GOB order

1 to seven calendar days, and then finally there is a
2 provision in the global bidding procedures order, which is
3 found at docket number 816, and specifically in those
4 procedures that paragraph 4A, there is a proviso that reads,
5 "Provided that if an affiliate or insider of the debtors
6 includes the credit bid for part or all of their applicable
7 stalking-horse bid, the debtor's will schedule a hearing
8 prior to the commencement of the auction for determination
9 of such affiliate's ability to credit bid, and such
10 affiliate shall not be entitled to credit bid at the auction
11 unless it is received in order of the court, approving the
12 ability of the credit bid prior -- the ability to credit bid
13 prior to the auction and complaint with the ABL orders."

14 And what the parties have agreed, subject to
15 approval by the Court is that that proviso would be
16 effectively waived for purposes of this auction so that
17 there's not going to be a determination on the ability to
18 credit bid prior to the auction. The debtors will consider
19 the ability of ESL to credit bid at the auction and will,
20 you know, should they make that determination that they're,
21 you know, in -- if ESL were to win the auction they would be
22 bringing that forward to the Court for the sale hearing.
23 All party's rights are reserved with respect to ESL's
24 ability to credit bid, but that just given the timing issues
25 that we were dealing with with, you know, running up against

1 the auction on the 14th and the cash burn that occurs at the
2 company that one modification would help us, we believe, be
3 able to hopefully get to an auction and have a chance to
4 save Sears as a going concern.

5 THE COURT: So, just to be clear then, if I --
6 correct me if I'm wrong. That waiver means that if a
7 portion of ESL's proposal includes a credit bid, it is not
8 pre-approved.

9 MR. SCHROCK: That is correct.

10 THE COURT: ESL is free to include a credit bid as
11 part of its proposal, but the debtors and the other parties
12 and interests will be reviewing that aspect of the proposed
13 transaction as well as all the other aspects in comparison
14 to the debtor's other alternatives.

15 MR. SCHROCK: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. SCHROCK: Your Honor, with that, you know, we
18 are, you know, moving forward and looking forward to the
19 auction on January 14th, and you know, we're very hopeful
20 that we have a great result. In the event that, you know,
21 in the unfortunate event that if asked to clarify one issue
22 for the debt lenders, and the unfortunate event that we were
23 to have to pivot to a liquidation. They just -- I believe
24 that they're -- they're not quite there on the debtors.
25 We're still going over the wind-down budget, we're still

1 going over certain issues related to that, and so I believe
2 that they wanted me to note that their rights are reserved
3 as to those issues. We're still working through it.

4 THE COURT: Okay. But otherwise, the so-called --
5 the consulting parties, which include the two dip lenders
6 and the committee are on board with the process that you
7 just outlined?

8 MR. SCHROCK: Yes, Judge that's -- I believe so.

9 THE COURT: And I just want to make clear, because
10 obviously, this is a large company, or group of companies
11 that affects a lot of people. The auction, as -- at, I
12 believe has always been the case, will involve the debtors
13 and their key consulting parties evaluating not only ESL's
14 proposal, but all their alternatives?

15 MR. SCHROCK: That's correct.

16 THE COURT: Including the potential liquidation
17 under the auspices of one or other group of liquidators and
18 the realization by the debtors on their other assets that
19 wouldn't be involved in a liquidation. So, the bankruptcy
20 code gives debtors a great deal of flexibility in
21 consultation and ultimately with the requirement to get
22 approval from the Court of how best to maximize their assets
23 and deal with all of their creditors, and that's what this
24 process is intended to enable. But it does appear to me to
25 be subject to getting the written documentation tomorrow. A

1 good development that there's a prospect for a potential
2 stand-alone proposal that might -- at the conclusion of that
3 auction, either in that form or as -- in a revised form, in
4 light of the results of the auction, enable the debtors to
5 survive is a growing concern, at least in part.

6 MR. SCHROCK: That is certainly our hope, Judge.

7 THE COURT: Okay, but of course, again, the
8 debtors have an obligation to review all of their
9 alternatives and will do so at the auction.

10 MR. SCHROCK: Your Honor, subject to any of the
11 other parties wanting to speak, I -- that's all the debtors
12 have.

13 THE COURT: Okay.

14 MR. QURESHI: Good afternoon, Your Honor. For the
15 record, Abid Qureshi, Akin, Gump, Strauss, Hauer, and Feld
16 on behalf of the official committee of unsecured creditors.
17 Your Honor, notwithstanding the fact that we are a
18 consultation party under the bid procedures order, the
19 committee has not been privy to the negotiations that have
20 taken place with ESL over the course of the last several
21 days. While we of course welcome the prospect of an auction
22 resulting in increased recovery for creditors, I think it's
23 fair to say that the committee has significant concerns
24 concerning whether ESL can get theirs. Your Honor has heard
25 the committee say in the past we do believe there are

1 significant viable claims against ESL and we will continue
2 to assess those. It is our expectation, Your Honor, that as
3 a consultation party we will be kept fully apprised of the
4 developments as things move forward between today and the
5 bid deadline and the auction.

6 THE COURT: All right. And then that's my
7 expectation, too. I appreciate that a lot of work has taken
8 place over the weekend and yesterday that I think
9 necessitated not leaving you and your colleagues and the dip
10 lenders and their professionals somewhat in the dark, but
11 obviously, you'll have some time between now and the 14th to
12 come up to speed, and if, you know, the debtors are not
13 forthcoming on that, you can reach me by email or setting up
14 a chambers conference call. The -- I just also want to make
15 clear that when I say the debtors, the debtors have set up a
16 special committee structure to enable them to review ESL
17 related transactions, but that doesn't relieve them from
18 sharing important and relevant information with the
19 committee and the dip lenders.

20 MR. SCHROCK: And we have Your Honor, and we will.
21 There were certainly some developments over the -- overnight
22 and over the last couple of days that --

23 THE COURT: Right.

24 MR. SCHROCK: Things are moving quickly, but we
25 will do our very best and I hope the committee knows we're

1 doing our very best.

2 THE COURT: Okay. All right. Anyone else?

3 MR. HOFFMANN: Good afternoon, Your Honor, Trevor
4 Hoffmann from Goulston and Storrs, and I represent several
5 landlords. Just trying to understand, I know Your Honor
6 said that the debtor's obliged to consider all alternatives,
7 what I -- what I just need to understand is I know from the
8 perspective of my clients they put in indicative bids with
9 respect to premises on which they have leases. I understand
10 other landlords did as well. Are we invited to the auction,
11 are we not invited? What is the process going forward?

12 THE COURT: To my mind the debtors will be
13 evaluating the ESL proposal as against their alternatives.
14 Those alternatives are somewhat open ended. They include
15 not only bids that have been made so far by people like your
16 clients, by sort of the larger liquidation firms, but also
17 their assessment of the value of assets that are not
18 included in those bids, and that includes potential
19 litigation claims. So, my expectation is that they have
20 that information already from the bids that have been
21 submitted. If people want to submit additional or improved
22 bids, they should do so. And that the debtor's financial
23 advisors will inform you whether it makes sense for you to
24 attend the auction or not.

25 MR. HOFFMANN: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. HOFFMANN: Again, thank you very much.

3 THE COURT: Okay, the last thing is I'm not
4 amending then the procedures order, that condition for pre-
5 approval or not of a credit bid is waived with parties'
6 rights reserved on that issue. And -- but that includes the
7 fact that we currently have scheduled a hearing to confirm
8 the results of the auction, I believe for the 31st. January
9 31st.

10 MR. SCHROCK: Yes, Your Honor.

11 THE COURT: Okay, so, that's probably the next
12 important court date. All right, thank you very much.

13 MR. SCHROCK: Thank you, Judge.

14 (Whereupon these proceedings were concluded at
15 1:19 PM)

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RULINGS

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Not amending procedures order	17	3
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

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Date: January 9, 2019